IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

F.A.O. No. 5 of 2002.

Date of decision:28th June, 2007.

Himachal Pradesh Financial Corporation
….Appellant

Versus

M/s National Disc. Industries ….Respondent

Coram

The Hon'ble Mr.Justice Dev Darshan Sud, J.

Whether approved for reporting?[1]

For the Appellant: Mr.Bimal Gupta, Advocate.

For the Respondent: Mr. R.K. Gautam, Sr. Advocate, with Mr. Naveen Bhardwaj, Advocate.

Dev Darshan Sud, J. (Oral).

This appeal has been preferred by the Himachal Pradesh Financial Corporation-decree holder against the order passed by the District Judge on 2.8.2000. Execution proceedings under Order 21 Rule 66 of the Code of Civil procedure were instituted by the appellant on 2.8.2000. Learned District Judge passed the following order:-

"2.8.2000 Present: Shri O.P. Sharma,
Advocate, counsel for
the petitioner/DH.

Shri M.S. Chandel,
Advocate, counsel for
the JD/respondent.

It is jointly submitted by both the counsels for the parties that this execution petition is likely to be amicably

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[1] ***Whether reports of Local Papers may be allowed to see the judgment?***

> settled and determined between them. It has been jointly urged before me by the counsel that this amicable settlement will finally take the shape of the amount of Rs. 12,00,000/- subject to some adjustments like the payment of rent of the premises from which the defendant/JD had been deprived of by the petitioner/DH. After adjustment of the amounts, the remaining amount will be paid to the DH by the JD within one month failing which the DH will have fresh right to file the execution and in that eventuality the JD would incur the payment of interest too. With these observations, the petition is dismissed as fully satisfied. It be consigned to the record room"

Learned counsel has challenged the order on a number of grounds including the ground that the counsel for the appellant-decree holder did not have authority to submit any compromise or make any statement compromising the case before the learned District Judge. It is by now well settled that no party can be allowed to controvert the court record and that the remedy, if any, is by way of filing review before the court which has recorded fact noted in the judgment. In **Madhu Sudan Chowdhri and others vs. Mst. Chandrabati Chowdhrain and others AIR 1917 PC 30** it has been held:-

> "……It was pointed out to their Lordships that the actual judgment was given some 14 days after the hearing of the appeal, and it is suggested that the learned Judges might have misunderstood the action of the pleader in the conduct of the case.

> Their Lordships are quite unable to accept this contention had there been any mistake in this respect it would have been incumbent upon the appellants while the matter was still fresh in the minds of the Judges, to have caused their pleader to call the attention of the Court to the fact that the statement made with regard to his conduct was a statement that had been made in error, no such step was taken, and, apart from the argument of counsel, there is nothing before their Lordships to make them think that any such mistake occurred……" *(page 32 C-2)*

In **Sarat Chandra Maiti and others vs. Bibhabati Debi and others AIR 1921 Cal 584** it has been held as under:-

> "…….Again, in *Nellavadivu v. Subramaniya* (46), Mr. Justice Sadasiva Iyer observed that a statement in a judgment as to an admission made before the Court of first instance should not be doubted lightly by the appellate Court, specially in the absence of an affidavit by the Vakil who appeared in the Court of fist instance. It is plain that in cases of this character where a litigant feels aggrieved by the statement in a judgment that an admission has been made, the most convenient and satisfactory course to follow, wherever practicable, is to apply to the Judge without delay and ask for rectification or review of the judgment……"
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> *(page 591 C-2)*

In the **King Emperor vs. Barendra Kumar Ghose, AIR 1924 Cal. 257** the High Court of Calcutta held:-

"……..I think the true rule is that we have no more power of contradicting the statement of a learned Judge in a matter of this description than we have the power of contradicting any allegation which may appear upon the record. As was said by Martin, B, in the case of *R v. Mellor* (6): " We must consider the statement of the learned Judge as absolute verity and we ought to take his statement precisely as a record and act on it in the same manner as on a record of Court, which of itself implies an absolute verity……..."

(page 306 C-2)

"…… But shorthand writers are not infallible, and these proceedings emphasize the importance of rigidly maintaining the rule that a statement by a learned Judge as to what took place during the course of a trial before him is final and decisive: It is not to be criticized or circumvented; much less is fit to be exposed to animadversion" *(page 317 C-1)*

In **State of Maharashtra v. Ramdas Shrinivas Nayak and another (1982) 2 SCC 463** the Hon'ble Court dealt with matter at length and laid down the following proposition of law:-

"When we drew the attention of the learned Attorney-General to the concession made before the High Court, Shri A.K. Sen, who appeared for the State of Maharashtra before the High Court and led the arguments for the respondents there and who appeared for Shri Antulay before us intervened and protested that he never made any such concession and invited us to peruse the written submissions made by him in the High

Court. We are afraid that we cannot launch into an enquiry as to what transpired in the High Court. It is simply not done. Public policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation." We are bound to accept the statement of the judges recorded in their judgment, as to what transpired in Court. We cannot allow the statement of the judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the judges, to call the attention of the very judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an appellate court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to

gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment."

(Para -4)

To the similar effect is the judgment in **Bhagwati Prasad vs. Delhi State Minerala Development (1990) 1 SCC 361** wherein it has been held:-

"Shri R.K. Jain, learned counsel for the respondent, has vehemently assailed the tenability of all the recommendations. It is his further contention that the respondent did not agree to dispense with adducing oral evidence and despite the direction of this Court to submit a preliminary report the Tribunal is wrong in stating that the respondent agreed that the Tribunal would send the final report. He disputed the findings on merits pointing out various contentions raised by the respondent in its pleading, objections and the documents filed before the Tribunal. It is now settled law that the statement of facts recorded by a court or quasi-judicial tribunal in its proceedings as regards the matters which transpired during the hearing before it would not be permitted to be assailed as incorrect unless steps are taken before the same forum. It may be open to a party to bring such statement to the notice of the court/ tribunal and to have it deleted or amended. It is not, therefore, open to the parties or the counsel to say that the proceedings recorded by the Tribunal are incorrect……". *(para-5)*

Again in **Ashwani Kumar Dhingra vs. State of Punjab (1992) 2 SCC 592** it has been held:-

> "It is clear in the present case that the appellant had not challenged the acquisition and it was not shown to us that he withdrew the compensation in pursuance of any order of any court to safeguard any other rights. It is also clear from the order of the learned Division Bench dismissing the writ petition, filed by the present appellant, what contention was urged by him before them. Learned counsel for the appellant submitted that this was not the contention urged by him before the High Court. We are afraid, such a plea cannot be permitted in the present appeal when the order was pronounced in the open court and the order was naturally to be pronounced on the submission made before the learned Division Bench. If the appellant had any such grievance, he should have approached the Division Bench with such a plea."
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> *(Para 11)*

In these circumstances, it is not open to the appellant to urge regarding what transpired before the learned Executing Court or the record of proceedings. The remedy to the appellant is to file a review before the Executing court. In these circumstances this appeal is disposed of. The appellant will approach before the Executing court for appropriate relief. Parties to appear before the Executing court on 24th August, 2007. There shall be no order as to costs.

28th June, 2007. **(Dev Darshan Sud),**
(cm) **Judge.**